

## Donald Phillips

---

**From:** Henriques, Mark <Mark.Henriques@wbd-us.com>  
**Sent:** Friday, October 25, 2019 1:09 PM  
**To:** Donald Phillips  
**Cc:** Jones, Beth; Palko, David  
**Subject:** Party Info for Petition

Beth Tyner Jones  
Partner  
Womble Bond Dickinson (US) LLP

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## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Friday, October 25, 2019 1:39 PM  
**To:** smg@wardandsmith.com  
**Cc:** Donald Phillips  
**Subject:** PROPOSED: Petition, Attachment A, and proposed Consent Order  
**Attachments:** 1118266 - Petition for Release of LEA Recording--Attachment A--Atty.Ken Gray.Ward and Smith - 1 - COG.DOCX; 1118268 - Petition for Release of LEA Recording--proposed Order--Atty.Ken Gray.Ward and Smith - 1 - COG.DOCX; Petition\_for\_Release\_of\_LEA\_Recording--AOC-CV-270--Atty\_Ken\_Gray\_Ward\_and\_Smith.pdf

**Re: Case Name:** **In the Matter of Custodial Law Enforcement Agency Recording Sought by: S. McKinley Gray, III, Esq. and Ward and Smith, P.A.**  
**Pitt County File No.:** 19 CVS \_\_\_\_\_  
**GPD Case File No.:** None

Ken:

As discussed earlier today, please find attached a draft Petition, Attachment A, and proposed Consent Order for your review and approval.

Please note that Mark P. Henriques, Esq. and Beth Jones, Esq. of Womble Bond Dickinson (US) LLP (Attorneys for UNC System) will also be filing and submitting similar documents.

Please give me a call if any changes need to be made or if you or your team have any questions regarding logistics. My direct line is (252) 329-4331.

Thank you.  
Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
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STATE OF NORTH CAROLINA  
COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 19 CVS \_\_\_\_\_

**IN THE MATTER OF CUSTODIAL  
LAW ENFORCEMENT AGENCY  
RECORDING SOUGHT BY:**

**S. MCKINLEY GRAY, III, ESQ. and  
WARD AND SMITH, P.A.,**

**Petitioners.**

## ATTACHMENT A

As set forth in the Petition to which this Attachment is incorporated by reference, it is requested that the City of Greenville/Greenville Police Department shall release, to Petitioners, by and through S. McKinley Gray, III, Esq., any and all footage/recordings from static/pole mounted (traffic/public safety) cameras as set forth below:

1. Footage of the area outside of the area of Sup Dogs (East Fifth Street/Reade Street), Greenville, NC between approximately 9:00 pm to 10:50 pm on Wednesday, September 25, 2019, particularly any footage showing Mr. Dan Gerlach.
2. Footage of the area outside of the area of Club 519 (East Fifth Street/Cotanche Street), Greenville, NC between approximately 10:40 pm on Wednesday, September 25, 2019 to approximately 1:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.
3. Footage showing the area of (East Fifth Street/Cotanche Street), Greenville, NC between approximately 1:40 am to 2:00 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.
4. Footage showing the area of 212 East Fifth Street (East Fifth Street/Reade Street), Greenville, NC between approximately 2:00 am to 2:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach, especially footage of Mr. Dan Gerlach approaching, walking up to, and entering a vehicle (believed to be a Gold colored Nissan) and then driving away from said location.

STATE OF NORTH CAROLINA  
COUNTY OF PITT

**IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 19 CVS \_\_\_\_\_**

**IN THE MATTER OF CUSTODIAL )  
LAW ENFORCEMENT AGENCY )  
RECORDING SOUGHT BY: )  
 )  
S. MCKINLEY GRAY, III, ESQ. and )  
WARD AND SMITH, P.A., )  
 )  
Petitioners. )**

**CONSENT ORDER  
ON PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT  
AGENCY RECORDING  
N.C.G.S. § 132-1.4A(g)**

**THIS MATTER** came on to be heard before the undersigned Superior Court Judge upon the Petition for Release of Custodial Law Enforcement Agency Recording filed on October 25, 2019 by Petitioners, S. McKinley Gray, III, Esq. and Ward and Smith, P.A., pursuant to N.C.G.S. § 132-1.4A(g) to determine whether release of law enforcement agency recordings related to this matter is warranted under Chapter 132 of the North Carolina General Statutes.

## APPEARANCES

For Petitioners: S. McKinley Gray, III, Esq.  
Ward and Smith, P.A.  
120 West Fire Tower Road  
Post Office Box 8088  
Greenville, NC 27835-8088  
*Petitioners*

For Custodial Law  
Enforcement Agency and  
the Head of the Custodial  
Law Enforcement  
Agency:

Donald K. Phillips  
Assistant City Attorney  
City of Greenville  
200 West Fifth Street  
Post Office Box 7207  
Greenville, North Carolina 27835  
*Counsel for City of Greenville (Greenville Police  
Department) and Designated Representative of Chief of  
Police Mark R. Holtzman (Head of Custodial Law  
Enforcement Agency)*

For Pitt County District Attorney's Office: None Appearing

**BASED UPON** the careful consideration of the arguments presented at the hearing of this matter and the entire record in this proceeding, the undersigned makes the following findings of fact.

### **FINDINGS OF FACT**

1. The Petitioners in this matter are S. McKinley Gray, III, Esq. and Ward and Smith, P.A. (“Petitioners”). On October 25, 2019, Petitioners, filed a Petition for Release of Custodial Law Enforcement Agency Recording pursuant to N.C.G.S. § 132-1.4A(g) on a form approved by the Administrative Office of the Courts (AOC-CV-270) (the “Petition”).

2. The City of Greenville (the “City”), is a municipal corporation organized and existing under the laws of the State of North Carolina.

3. Pursuant to Chapter 160A of the North Carolina General Statutes, the City has established, organized, and maintained an accredited law enforcement agency, the Greenville Police Department (“GPD”), with territorial jurisdiction and all law enforcement powers as authorized by statute, case law, and the common law of the State of North Carolina within the corporate limits of the City.

4. Petitioners seek footage from certain traffic/public safety cameras which are unrelated to any pending GPD criminal investigation.

5. The City and GPD consider Petitioners’ Petition to be a request for traffic/public safety cameras recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), which are not public record pursuant to N.C.G.S. § 132-1.4(c) and N.C.G.S. § 132-1.4A(b), and of which GPD owns or leases or whose personnel operates the equipment that created the recordings at the time the recordings were made.

6. GPD is the custodial law enforcement agency at issue in this matter as defined by N.C.G.S. § 132-1.4A(a)(2).

7. On or about October 25, 2019, in accordance with N.C.G.S. § 132-1.4A(g), Petitioners served a copy of the Petition upon Mark R. Holtzman, GPD Chief of Police, the head of the custodial law enforcement agency (“Chief Holtzman”), and upon the Honorable Faris C. Dixon, District Attorney for Prosecutorial District 3A, Pitt County (“District Attorney Dixon”).

8. On or about October 25, 2019, the Petitioners also served a courtesy copy of same to Donald K. Phillips, Assistant City Attorney and the attorney for the City and GPD (“Mr. Phillips”).

9. In accordance with N.C.G.S. § 132-1.4A(g), Chief Holtzman (“the head of the custodial law enforcement agency”) was notified of the Petition and has been given an

opportunity to be heard, by and through his designated representative, Mr. Phillips (“and those persons, or their designated representative,” have been “given an opportunity to be heard”).

10. In accordance with N.C.G.S. § 132-1.4A(g), the City is unaware of any law enforcement agency personnel whose image or voice are in any of the recordings at issue. Accordingly, there are no law enforcement agency personnel subject to being notified and given an opportunity to be heard in this matter.

11. Each person entitled to be notified of this proceeding, was given an opportunity to be heard, either individually or by such person’s designated representative.

12. GPD has custody of the following seven (7) recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), involving and/or related to Petitioners’ request and that are the subject of the Petition at issue:

GPD Recording				
No.	GPD File Name	Date	Type	Time
1.	TFC_GPD_5thReade_PTZ_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/25/2019	Traffic/Public Safety Camera	9:20 pm-10:45 pm 9:20 pm-9:30 pm 9:20 pm-9:30 pm
2.	UPT_GPD_5thCotanche_Quad5_N_R6a UPT_GPD_5thCotanche_Quad5_E_R6a UPT_GPD_5thCotanche_Quad5_W_R6a	09/25/2019	Traffic/Public Safety Camera	10:41 pm-10:43 pm 10:41 pm-10:43 pm 10:41 pm-10:43 pm
3.	UPT_GPD_5thCotanche_Quad1_SE_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/25/2019	Traffic/Public Safety Camera	10:42 pm-10:46 pm 10:42 pm-10:46 pm 10:42 pm-10:46 pm
4.	UPT_GPD_5thCotanche_Quad4_SW_R6a UPT_GPD_5thCotanche_Quad4_W_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am
5.	UPT_GPD_5thCotanche_Quad1_S_R6a UPT_GPD_5thCotanche_Quad1_SE_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am
6.	UPT_GPD_5thCotanche_S_R2	09/26/2019	Traffic/Public Safety Camera	1:16am-1:17 and 1:47 am-1:56 am
7.	TFC_GPD_5thReade_PTZ_R2 TFC_GPD_5thReade_W_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/26/2019	Traffic/Public Safety Camera	2:10 am-2:13 am

13. Herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 are City traffic/public safety camera “recordings,” as defined by N.C.G.S. § 132-1.4A(a)(6)(“[a] visual, audio, or visual and audio recording captured by . . . any other video or audio recording device . . .”). The parties agree and stipulate to the release of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in its entirety to Petitioners. The parties further agree and stipulate that GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in their entireties as herein defined are relevant to Petitioners’ request and are subject to release to Petitioners as defined by N.C.G.S. § 132-1.4A(a)(7) as further ordered herein.

14. All recordings at issue in this matter were made entirely in Pitt County, North Carolina.

15. The Court did not conduct an in-camera review of any recordings at issue in this case.

**BASED UPON** the foregoing findings of fact, the undersigned makes the following conclusions of law.

#### **CONCLUSIONS OF LAW**

1. The filing of this Petition is made in accordance with N.C.G.S. § 132-1.4A(g).
2. Each person entitled to be notified of the proceeding was given an opportunity to be heard, either individually or by such person’s designated representative.
3. To the extent that same exists, Petitioners have stated the date and approximate time of the activity captured in the recordings sought or have otherwise identified the activity with reasonable particularity sufficient to identify the recordings.
4. The Court has jurisdiction over the parties and the subject matter herein.
5. The Court has carefully reviewed N.C.G.S. § 132-1.4A in its entirety.
6. A “recording” is defined in N.C.G.S. § 132-1.4A(a)(6) as:  
  
[a] visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
7. “Release,” as defined by N.C.G.S. § 132-1.4A(a)(7), means “[t]o provide a copy of a recording.”

8. All of the recordings at issue (GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7) are records of criminal investigations and/or records of criminal intelligence information pursuant to N.C.G.S. § 132-1.4. Additionally, all recordings at issue are not public records pursuant to N.C.G.S. § 132-1.4(a) and N.C.G.S. § 132-1.4A(b). Accordingly, the recordings at issue contain information that is otherwise exempt from disclosure or release under North Carolina law.

9. Pursuant to N.C.G.S. § 132-1.4A(g), Petitioners seek release of all of the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7.

10. N.C.G.S. § 132-1.4A(g) states in pertinent part:

In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

11. The Court has considered the standards set out in N.C.G.S. § 132-1.4A(g) and other standards the Court deems relevant in determining whether to order the release of all or a portion of the recordings at issue.

12. Pursuant to N.C.G.S. § 132-1.4A(g), “[t]he court shall release only those portions of the recording that are relevant to the person’s request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.”

The Court does hereby **ORDER, ADJUDGE, and DECREE** as follows:

1. That by stipulation, the parties agree that the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7, which are relevant to the Petitioners’ request, should be released, as defined by N.C.G.S. § 132-1.4A(a)(7), to Petitioners as further ordered herein.



2. That upon payment by Petitioners of \$5.00 per DVD to the City of Greenville, pursuant to N.C.G.S. § 132-1.4A(l) and *The City of Greenville Manual of Fees* (available at: <https://www.greenvillenc.gov/home/showdocument?id=6918>), with a copy of the receipt emailed or otherwise provided to Mr. Phillips, GPD shall provide to Petitioners within ten (10) business days from the satisfactory receipt of said payment receipt, the requisite number of DVDs containing the contents and portions of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 as herein identified and ordered.

**SO ORDERED**, this the \_\_\_\_\_ day of October, 2019.

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Superior Court Judge Presiding

CONSENTED TO:

For Petitioners:

For Custodial Law Enforcement Agency and  
the Head of the Custodial Law Enforcement  
Agency:

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S. McKinley Gray, III, Esq.  
Ward and Smith, P.A.

---

Donald K. Phillips  
Assistant City Attorney

1118268

**STATE OF NORTH CAROLINA**

File No.

**19 CVS****PITT** CountyIn The General Court Of Justice  
Superior Court Division**IN THE MATTER OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING SOUGHT BY:**

Name Of Petitioner

**S. McKinley Gray, III, Esq. and Ward and Smith, P.A.**

Address

c/o Ward and Smith, P.A.  
120 West Fire Tower Road  
Post Office Box 8088

City, State, Zip

Greenville, NC 27835-8088

Phone No.

(919) 672-5476

Fax No.

(919) 672-5477

Email Address

[smg@wardandsmith.com](mailto:smg@wardandsmith.com)**PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure  
(No Filing Fee Applies)☒ G.S. 132-1.4A(g) – General  
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to S. McKinley Gray, III, Attorney. State that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Petitioners request all relevant video/recorded footage from static/pole mounted (traffic/public safety) cameras covering the area of 1) East Fifth Street and Reade Street in Greenville, NC and 2) East Fifth Street and Cotanche Street in Greenville, NC between approximately 9:00 pm on Wednesday, September 25, 2019 and 2:30 am on Thursday, September 26, 2019 showing Mr. Dan Gerlach in this area and otherwise approaching, walking up to, entering a vehicle (believed to be a gold colored Nissan), and then driving away from said location. Petitioners' more specific request for release is stated in Attachment A, which is hereby made a part of this Petition.

(Please see Attachment A)

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE  
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☒ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:Mark R. Holtzman  
Chief of Police  
Greenville Police Department  
500 South Greene Street  
Greenville, NC 27834Note: Also copied Assistant City Attorney Donald K. Phillips by email to: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☒ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:The Honorable Faris C. Dixon  
Pitt County District Attorney  
Pitt County Courthouse  
100 West 3rd Street  
Greenville, NC 27858

Date

**October 25, 2019**

Petitioner's Signature

S. McKinley Gray, III

## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Friday, October 25, 2019 2:03 PM  
**To:** mark.henriques@wbd-us.com; beth.jones@wbd-us.com  
**Cc:** Donald Phillips  
**Subject:** RE: PROPOSED: Petition, Attachment A, and proposed Consent Order  
**Attachments:** 1118270 - Petition for Release of LEA Recording--Attachment A--Atty.Beth Tyner Jones.Womble Bond Dickinson - 1 - COG.DOCX; 1118271 - Petition for Release of LEA Recording--proposed Order--Atty.Beth Tyner Jones.Womble Bond Dickinson - 1 - COG.DOCX; Petition\_for\_Release\_of\_LEA\_Recording--AOC-CV-270--Atty\_Beth\_Tyner\_Jones\_Womble\_Bond\_Dickinson.pdf

**Re: Case Name:** **In the Matter of Custodial Law Enforcement Agency Recording Sought by: Beth Tyner Jones, Esq. and Womble Bond Dickinson (US) LLP, P.A.**  
**Pitt County File No.:** 19 CVS \_\_\_\_\_  
**GPD Case File No.:** None

Mark and Beth:

As discussed earlier today, please find attached a draft Petition, Attachment A, and proposed Consent Order for your review and approval.

Please note that Ken Gray and Ward and Smith, P.A. (Attorneys for Dan Gerlach) will also be filing and submitting similar documents.

Please give me a call if any changes need to be made or if you or your team have any questions regarding logistics. My direct line is (252) 329-4331.

Thank you.  
Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



STATE OF NORTH CAROLINA  
COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 19 CVS \_\_\_\_\_

IN THE MATTER OF CUSTODIAL )  
LAW ENFORCEMENT AGENCY )  
RECORDING SOUGHT BY: )  
 )  
BETH TYNER JONES, ESQ. and )  
WOMBLE BOND DICKINSON (US) LLP, )  
 )  
Petitioners. )

**ATTACHMENT A**

As set forth in the Petition to which this Attachment is incorporated by reference, it is requested that the City of Greenville/Greenville Police Department shall release, to Petitioners, by and through Beth Tyner Jones, Esq., any and all footage/recordings from static/pole mounted (traffic/public safety) cameras as set forth below:

1. Footage of the area outside of the area of Sup Dogs (East Fifth Street/Reade Street), Greenville, NC between approximately 9:00 pm to 10:50 pm on Wednesday, September 25, 2019, particularly any footage showing Mr. Dan Gerlach.

2. Footage of the area outside of the area of Club 519 (East Fifth Street/Cotanche Street), Greenville, NC between approximately 10:40 pm on Wednesday, September 25, 2019 to approximately 1:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.

3. Footage showing the area of (East Fifth Street/Cotanche Street), Greenville, NC between approximately 1:40 am to 2:00 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.

4. Footage showing the area of 212 East Fifth Street (East Fifth Street/Reade Street), Greenville, NC between approximately 2:00 am to 2:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach, especially footage of Mr. Dan Gerlach approaching, walking up to, and entering a vehicle (believed to be a Gold colored Nissan) and then driving away from said location.

STATE OF NORTH CAROLINA

COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 19 CVS \_\_\_\_\_

IN THE MATTER OF CUSTODIAL  
LAW ENFORCEMENT AGENCY  
RECORDING SOUGHT BY:

BETH TYNER JONES, ESQ. and  
WOMBLE BOND DICKINSON (US) LLP,

Petitioners.

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CONSENT ORDER  
ON PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT  
AGENCY RECORDING  
N.C.G.S. § 132-1.4A(g)

**THIS MATTER** came on to be heard before the undersigned Superior Court Judge upon the Petition for Release of Custodial Law Enforcement Agency Recording filed on October 25, 2019 by Petitioners, Beth Tyner Jones, Esq. and Womble Bond Dickinson (US) LLP, pursuant to N.C.G.S. § 132-1.4A(g) to determine whether release of law enforcement agency recordings related to this matter is warranted under Chapter 132 of the North Carolina General Statutes.

**APPEARANCES**

For Petitioners:

Beth Tyner Jones, Esq. and  
Womble Bond Dickinson (US) LLP  
555 Fayetteville Street, Suite 1100  
Raleigh, North Carolina 27601  
*Petitioners*

For Custodial Law  
Enforcement Agency and  
the Head of the Custodial  
Law Enforcement  
Agency:

Donald K. Phillips  
Assistant City Attorney  
City of Greenville  
200 West Fifth Street  
Post Office Box 7207  
Greenville, North Carolina 27835  
*Counsel for City of Greenville (Greenville Police  
Department) and Designated Representative of Chief of  
Police Mark R. Holtzman (Head of Custodial Law  
Enforcement Agency)*

For Pitt County District  
Attorney's Office:

None Appearing

**BASED UPON** the careful consideration of the arguments presented at the hearing of this matter and the entire record in this proceeding, the undersigned makes the following findings of fact.

### **FINDINGS OF FACT**

1. The Petitioners in this matter are Beth Tyner Jones, Esq. and Womble Bond Dickinson (US) LLP (“Petitioners”). On October 25, 2019, Petitioners, filed a Petition for Release of Custodial Law Enforcement Agency Recording pursuant to N.C.G.S. § 132-1.4A(g) on a form approved by the Administrative Office of the Courts (AOC-CV-270) (the “Petition”).

2. The City of Greenville (the “City”), is a municipal corporation organized and existing under the laws of the State of North Carolina.

3. Pursuant to Chapter 160A of the North Carolina General Statutes, the City has established, organized, and maintained an accredited law enforcement agency, the Greenville Police Department (“GPD”), with territorial jurisdiction and all law enforcement powers as authorized by statute, case law, and the common law of the State of North Carolina within the corporate limits of the City.

4. Petitioners seek footage from certain traffic/public safety cameras which are unrelated to any pending GPD criminal investigation.

5. The City and GPD consider Petitioners’ Petition to be a request for traffic/public safety cameras recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), which are not public record pursuant to N.C.G.S. § 132-1.4(c) and N.C.G.S. § 132-1.4A(b), and of which GPD owns or leases or whose personnel operates the equipment that created the recordings at the time the recordings were made.

6. GPD is the custodial law enforcement agency at issue in this matter as defined by N.C.G.S. § 132-1.4A(a)(2).

7. On or about October 25, 2019, in accordance with N.C.G.S. § 132-1.4A(g), Petitioners served a copy of the Petition upon Mark R. Holtzman, GPD Chief of Police, the head of the custodial law enforcement agency (“Chief Holtzman”), and upon the Honorable Faris C. Dixon, District Attorney for Prosecutorial District 3A, Pitt County (“District Attorney Dixon”).

8. On or about October 25, 2019, the Petitioners also served a courtesy copy of same to Donald K. Phillips, Assistant City Attorney and the attorney for the City and GPD (“Mr. Phillips”).

9. In accordance with N.C.G.S. § 132-1.4A(g), Chief Holtzman (“the head of the custodial law enforcement agency”) was notified of the Petition and has been given an

opportunity to be heard, by and through his designated representative, Mr. Phillips (“and those persons, or their designated representative,” have been “given an opportunity to be heard”).

10. In accordance with N.C.G.S. § 132-1.4A(g), the City is unaware of any law enforcement agency personnel whose image or voice are in any of the recordings at issue. Accordingly, there are no law enforcement agency personnel subject to being notified and given an opportunity to be heard in this matter.

11. Each person entitled to be notified of this proceeding, was given an opportunity to be heard, either individually or by such person’s designated representative.

12. GPD has custody of the following seven (7) recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), involving and/or related to Petitioners’ request and that are the subject of the Petition at issue:

GPD Recording				
No.	GPD File Name	Date	Type	Time
1.	TFC_GPD_5thReade_PTZ_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/25/2019	Traffic/Public Safety Camera	9:20 pm-10:45 pm 9:20 pm-9:30 pm 9:20 pm-9:30 pm
2.	UPT_GPD_5thCotanche_Quad5_N_R6a UPT_GPD_5thCotanche_Quad5_E_R6a UPT_GPD_5thCotanche_Quad5_W_R6a	09/25/2019	Traffic/Public Safety Camera	10:41 pm-10:43 pm 10:41 pm-10:43 pm 10:41 pm-10:43 pm
3.	UPT_GPD_5thCotanche_Quad1_SE_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/25/2019	Traffic/Public Safety Camera	10:42 pm-10:46 pm 10:42 pm-10:46 pm 10:42 pm-10:46 pm
4.	UPT_GPD_5thCotanche_Quad4_SW_R6a UPT_GPD_5thCotanche_Quad4_W_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am
5.	UPT_GPD_5thCotanche_Quad1_S_R6a UPT_GPD_5thCotanche_Quad1_SE_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am
6.	UPT_GPD_5thCotanche_S_R2	09/26/2019	Traffic/Public Safety Camera	1:16am-1:17 and 1:47 am-1:56 am
7.	TFC_GPD_5thReade_PTZ_R2 TFC_GPD_5thReade_W_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/26/2019	Traffic/Public Safety Camera	2:10 am-2:13 am

13. Herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 are City traffic/public safety camera “recordings,” as defined by N.C.G.S. § 132-1.4A(a)(6)(“[a] visual, audio, or visual and audio recording captured by . . . any other video or audio recording device . . .”). The parties agree and stipulate to the release of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in its entirety to Petitioners. The parties further agree and stipulate that GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in their entireties as herein defined are relevant to Petitioners’ request and are subject to release to Petitioners as defined by N.C.G.S. § 132-1.4A(a)(7) as further ordered herein.

14. All recordings at issue in this matter were made entirely in Pitt County, North Carolina.

15. The Court did not conduct an in-camera review of any recordings at issue in this case.

**BASED UPON** the foregoing findings of fact, the undersigned makes the following conclusions of law.

#### **CONCLUSIONS OF LAW**

1. The filing of this Petition is made in accordance with N.C.G.S. § 132-1.4A(g).
2. Each person entitled to be notified of the proceeding was given an opportunity to be heard, either individually or by such person’s designated representative.
3. To the extent that same exists, Petitioners have stated the date and approximate time of the activity captured in the recordings sought or have otherwise identified the activity with reasonable particularity sufficient to identify the recordings.
4. The Court has jurisdiction over the parties and the subject matter herein.
5. The Court has carefully reviewed N.C.G.S. § 132-1.4A in its entirety.
6. A “recording” is defined in N.C.G.S. § 132-1.4A(a)(6) as:  
  
[a] visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
7. “Release,” as defined by N.C.G.S. § 132-1.4A(a)(7), means “[t]o provide a copy of a recording.”



8. All of the recordings at issue (GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7) are records of criminal investigations and/or records of criminal intelligence information pursuant to N.C.G.S. § 132-1.4. Additionally, all recordings at issue are not public records pursuant to N.C.G.S. § 132-1.4(a) and N.C.G.S. § 132-1.4A(b). Accordingly, the recordings at issue contain information that is otherwise exempt from disclosure or release under North Carolina law.

9. Pursuant to N.C.G.S. § 132-1.4A(g), Petitioners seek release of all of the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7.

10. N.C.G.S. § 132-1.4A(g) states in pertinent part:

In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

11. The Court has considered the standards set out in N.C.G.S. § 132-1.4A(g) and other standards the Court deems relevant in determining whether to order the release of all or a portion of the recordings at issue.

12. Pursuant to N.C.G.S. § 132-1.4A(g), “[t]he court shall release only those portions of the recording that are relevant to the person’s request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.”

The Court does hereby **ORDER, ADJUDGE, and DECREE** as follows:

1. That by stipulation, the parties agree that the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7, which are relevant to the Petitioners’ request, should be released, as defined by N.C.G.S. § 132-1.4A(a)(7), to Petitioners as further ordered herein.

2. That upon payment by Petitioners of \$5.00 per DVD to the City of Greenville, pursuant to N.C.G.S. § 132-1.4A(l) and *The City of Greenville Manual of Fees* (available at: <https://www.greenvillenc.gov/home/showdocument?id=6918>), with a copy of the receipt emailed or otherwise provided to Mr. Phillips, GPD shall provide to Petitioners within ten (10) business days from the satisfactory receipt of said payment receipt, the requisite number of DVDs containing the contents and portions of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 as herein identified and ordered.

**SO ORDERED**, this the \_\_\_\_\_ day of October, 2019.

---

Superior Court Judge Presiding

CONSENTED TO:

For Petitioners:

For Custodial Law Enforcement Agency and  
the Head of the Custodial Law Enforcement  
Agency:

---

Beth Tyner Jones, Esq.  
Womble Bond Dickinson (US) LLP

---

Donald K. Phillips  
Assistant City Attorney

1118271

# STATE OF NORTH CAROLINA

File No.

**19 CVS**

**PITT** County

In The General Court Of Justice  
Superior Court Division

## IN THE MATTER OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING SOUGHT BY:

Name Of Petitioner

**Beth Tyner Jones, Esq. and  
Womble Bond Dickinson (US) LLP**

Address

c/o Womble Bond Dickinson (US) LLP  
555 Fayetteville Street  
Suite 1100

City, State, Zip

Raleigh, NC 27601

Phone No.

(919) 755-8177

Fax No.

(919) 755-6075

Email Address

[beth.jones@wbd-us.com](mailto:beth.jones@wbd-us.com)

## PETITION FOR RELEASE OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING

☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure  
(No Filing Fee Applies)

☒ G.S. 132-1.4A(g) – General  
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to Beth Tyner Jones, Attorney, State that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Petitioners request all relevant video/recorded footage from static/pole mounted (traffic/public safety) cameras covering the area of 1) East Fifth Street and Reade Street in Greenville, NC and 2) East Fifth Street and Cotanche Street in Greenville, NC between approximately 9:00 pm on Wednesday, September 25, 2019 and 2:30 am on Thursday, September 26, 2019 showing Mr. Dan Gerlach in this area and otherwise approaching, walking up to, entering a vehicle (believed to be a gold colored Nissan), and then driving away from said location. Petitioners' more specific request for release is stated in Attachment A, which is hereby made a part of this Petition.

(Please see Attachment A)

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

### CERTIFICATE OF SERVICE ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

- ☒ Personal Delivery  
☐ By Regular Mail, US postage prepaid, addressed as follows:

Mark R. Holtzman  
Chief of Police  
Greenville Police Department  
500 South Greene Street  
Greenville, NC 27834

Note: Also copied Assistant City Attorney Donald K. Phillips by email to: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

### CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

- ☒ Personal Delivery  
☐ By Regular Mail, US postage prepaid, addressed as follows:

The Honorable Faris C. Dixon  
Pitt County District Attorney  
Pitt County Courthouse  
100 West 3rd Street  
Greenville, NC 27858

Date

**October 25, 2019**

Petitioner's Signature

Beth Tyner Jones

## Donald Phillips

---

**From:** Henriques, Mark <Mark.Henriques@wbd-us.com>  
**Sent:** Friday, October 25, 2019 2:13 PM  
**To:** Donald Phillips  
**Cc:** Palko, David; Jones, Beth  
**Subject:** RE: PROPOSED: Petition, Attachment A, and proposed Consent Order

Thank you. These look good. A saw one typo in petitioner. Should be "Carolina" instead of "Caroline."

David Palko, an attorney in our office, is on the way to your office to pick up the documents.

Thanks very much for your help.

Mark

**Mark Henriques**  
Partner  
Womble Bond Dickinson (US) LLP

d: 704-331-4912  
m: 704-650-2496  
e: [Mark.Henriques@wbd-us.com](mailto:Mark.Henriques@wbd-us.com)

One Wells Fargo Center  
Suite 3500  
301 South College Street  
Charlotte, NC 28202-6037



[womblebond Dickinson.com](http://womblebond Dickinson.com)



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**From:** Donald Phillips <DKPhillips@greenvillenc.gov>  
**Sent:** Friday, October 25, 2019 2:03 PM  
**To:** Henriques, Mark <Mark.Henriques@wbd-us.com>; Jones, Beth <Beth.Jones@wbd-us.com>  
**Cc:** Donald Phillips <DKPhillips@greenvillenc.gov>  
**Subject:** RE: PROPOSED: Petition, Attachment A, and proposed Consent Order

**Re: Case Name:** In the Matter of Custodial Law Enforcement Agency Recording Sought  
**by: Beth Tyner Jones, Esq. and Womble Bond Dickinson (US) LLP, P.A.**  
**Pitt County File No.:** 19 CVS \_\_\_\_\_

Mark and Beth:

As discussed earlier today, please find attached a draft Petition, Attachment A, and proposed Consent Order for your review and approval.

Please note that Ken Gray and Ward and Smith, P.A. (Attorneys for Dan Gerlach) will also be filing and submitting similar documents.

Please give me a call if any changes need to be made or if you or your team have any questions regarding logistics. My direct line is (252) 329-4331.

Thank you.

Donald

**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



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## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Friday, October 25, 2019 2:13 PM  
**To:** Henriques, Mark  
**Cc:** Palko, David; Jones, Beth; Donald Phillips  
**Subject:** RE: PROPOSED: Petition, Attachment A, and proposed Consent Order

Will fix. Thank you.

Donald

### Donald K. Phillips

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



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**Sent:** Friday, October 25, 2019 2:13 PM  
**To:** Donald Phillips <DKPhillips@greenvillenc.gov>  
**Cc:** Palko, David <David.Palko@wbd-us.com>; Jones, Beth <Beth.Jones@wbd-us.com>  
**Subject:** RE: PROPOSED: Petition, Attachment A, and proposed Consent Order

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David Palko, an attorney in our office, is on the way to your office to pick up the documents.

Thanks very much for your help.

Mark

### Mark Henriques

Partner

Womble Bond Dickinson (US) LLP

d: 704-331-4912

m: 704-650-2496

e: [Mark.Henriques@wbd-us.com](mailto:Mark.Henriques@wbd-us.com)

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Suite 3500

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Charlotte, NC 28202-6037





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**From:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>

**Sent:** Friday, October 25, 2019 2:03 PM

**To:** Henriques, Mark <[Mark.Henriques@wbd-us.com](mailto:Mark.Henriques@wbd-us.com)>; Jones, Beth <[Beth.Jones@wbd-us.com](mailto:Beth.Jones@wbd-us.com)>

**Cc:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>

**Subject:** RE: PROPOSED: Petition, Attachment A, and proposed Consent Order

**Re: Case Name:** In the Matter of Custodial Law Enforcement Agency Recording Sought by: Beth Tyner Jones, Esq. and Womble Bond Dickinson (US) LLP, P.A.  
**Pitt County File No.:** 19 CVS \_\_\_\_\_  
**GPD Case File No.:** None

Mark and Beth:

As discussed earlier today, please find attached a draft Petition, Attachment A, and proposed Consent Order for your review and approval.

Please note that Ken Gray and Ward and Smith, P.A. (Attorneys for Dan Gerlach) will also be filing and submitting similar documents.

Please give me a call if any changes need to be made or if you or your team have any questions regarding logistics. My direct line is (252) 329-4331.

Thank you.  
Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
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## Donald Phillips

---

**From:** Peter Romary <peter.romary@qverity.com>  
**Sent:** Friday, October 25, 2019 2:19 PM  
**To:** Donald Phillips  
**Subject:** Re: REVISED: New Petition and Response to Public Records Request

Hi, Donald:

I have tried to review the DVD and it is filled with pictures of maps of Holland (I know some Dutch) and some views of daytime still pictures in some places and some random maps.

Would it be possible to have someone from tech call me -- while pictures of Holland and maps from 2018 have some aesthetic value, there seems to be nothing of or about Gerlach on here -- I tried through DVD player and some high tech programs on the computer.

Maybe someone can send me videos in Zip folder or via WeTransfer -- I know Judge Blount is back in Greenville if we need him, but PBA // FoP needed the videos today and the maps might be a surprise -- did they play for you when you did a validation check -- if so, can you tell me the program that cut past the maps and pictures -- they are all still frames.

Many thanks,

Peter

On Fri, Oct 25, 2019 at 9:14 AM Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)> wrote:

### **RESPONSE TO PUBLIC RECORDS REQUEST**

Peter:

I am not sure when City Attorney's Office will be making the calls. We have a lot of matters going on. Unfortunately, I will only be able to provide you the one (1) DVD upon receipt of the entered Consent Order and payment to the City of Greenville of \$5.00.

On behalf of the City and in response to your below public records request, please find attached the email I sent to Mr. Henriques and Mr. Gray on Monday, October 14, 2019. The City hereby considers your public records request concluded.

Thank you.

Donald

**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



**From:** Peter Romary <[peter.romary@qverity.com](mailto:peter.romary@qverity.com)>

**Sent:** Thursday, October 24, 2019 7:55 PM

**To:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>

**Subject:** Re: REVISED: New Petition, Attachment A, and proposed Consent Order

Many thanks, Donald.

Would it be possible to let them know when I pick up the DVDs pursuant to the order, because at that point I will know that we had no last minute hiccups and also you can inform them, without any objections from me, that (if I can get the 5 copies -- I'll pay the \$25) a copy is either being sent / or is being given to the UNC Board of Governors (so that way they are fully apprised of where this went).

I also wondered (not just because it is a public record) if I could get a copy of the emails you sent to Mark and Ken Gray last week so that my clients can understand more fully why the courtesy calls were made to them, as they had made inquiries about the videos -- I doubt they will have any objections, nor should they as I know I would be very grateful for that courtesy.

I hope to be there at or around 10:30-10:45 and look forward to meeting you.

One final thing (again apologies) -- I know some folks don't have DVD players on their computers -- if I leave a flash drive there with your folks while over at the courthouse filing (it may have some other docs on) but do you think someone could also download onto there? It also makes it easier for me to make a copy onto my external HD which I use to back up.

Thanks again for all your help with this.

Very best wishes,

Peter

On Thu, Oct 24, 2019 at 5:43 PM Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)> wrote:

Peter:

Based upon our conversation a few moments ago, please find attached the revised Petition, Attachment A, and proposed Consent Order for your final approval.

As stated, I will be contacting Mark P. Henriques, Esq. of Womble Bond Dickinson (US) LLP (Attorneys for UNC System) and S. McKinley Gray, III, Esq. of Ward and Smith, P.A. (Attorneys for Dan Gerlach) tomorrow letting them know that this is being filed. City Attorney's Office will also be giving a courtesy call to ECU's General Counsel.

Thank you.

Donald

**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



**From:** Donald Phillips

**Sent:** Thursday, October 24, 2019 2:19 PM

**To:** Peter Romary <[peter.romary@qverity.com](mailto:peter.romary@qverity.com)>

**Cc:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>

**Subject:** New Petition and Appendix

Peter:

Please find attached your original proposed Petition and Appendix A and a revised Petition and Attachment A. I have also attached a proposed Consent Order for your consideration and review. What is the legal entity name of your "Fraternal Order of Police" client? I guessed that it is the one listed, but was not sure.

Please give me a call at your convenience to let me know your thoughts.

Thank you.

Donald

**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207



Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



**From:** Peter Romary <[peter.romary@qverity.com](mailto:peter.romary@qverity.com)>

**Sent:** Wednesday, October 23, 2019 5:50 PM

**To:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>

**Subject:** New Petition and Appendix

Many thanks for your assistance, Don!

Please see attached -- if you can let me know the the best day for you, as I say, I can be there this Friday or next Monday or Tuesday.

You have been very kind and helpful with all of this and I am extremely grateful to you for all you have done for me and for my clients (which group seems to be growing by the minute ) -- I look forward to going back to working with Hedge Funds as well as screening and recommending people for Judicial appointments (Federal and State -- especially if we do grow the number of Special Superior Court Judges for NC then I will have much more work in screening and selecting)

Very best wishes,

Peter

--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

---

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--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

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--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

## Donald Phillips

---

**From:** Donald Phillips  
**Sent:** Friday, October 25, 2019 2:24 PM  
**To:** Henriques, Mark; Jones, Beth; Palko, David  
**Cc:** Donald Phillips  
**Subject:** REVISED PROPOSED: Petition, Attachment A, and proposed Consent Order  
**Attachments:** 1118271 - Petition for Release of LEA Recording--proposed Order--Atty.Beth Tyner Jones.Womble Bond Dickinson - 1 - COG.DOCX; 1118270 - Petition for Release of LEA Recording--Attachment A--Atty.Beth Tyner Jones.Womble Bond Dickinson - 1 - COG.DOCX; Petition\_for\_Release\_of\_LEA\_Recording--AOC-CV-270--Atty\_Beth\_Tyner\_Jones\_Womble\_Bond\_Dickinson.pdf

REVISED (ATTACHED)

Please see the revised documents attached. I understand that David will be bringing duplicate original Petitions (with Attachment A) and I will provide him with three (3) duplicate original proposed Consent Orders, which I will sign. David will then take those to Courthouse and then once the Consent Order is entered, will return to City Hall, provide me with a file-stamped copy of the Petition and Consent Order, pay the \$5.00, sign an acknowledgment of receipt, and then obtain one (1) DVD.

Please advise.

Thank you.  
Donald

**Donald K. Phillips**  
Assistant City Attorney  
P.O. Box 7207  
Greenville, NC 27835-7207  
Tel: (252) 329-4426  
Fax: (252) 329-4626  
Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)  
Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



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**From:** Donald Phillips  
**Sent:** Friday, October 25, 2019 2:13 PM  
**To:** Henriques, Mark <Mark.Henriques@wbd-us.com>  
**Cc:** Palko, David <David.Palko@wbd-us.com>; Jones, Beth <Beth.Jones@wbd-us.com>; Donald Phillips <DKPhillips@greenvillenc.gov>  
**Subject:** RE: PROPOSED: Petition, Attachment A, and proposed Consent Order

Will fix. Thank you.

Donald

**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



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**From:** Henriques, Mark <[Mark.Henriques@wbd-us.com](mailto:Mark.Henriques@wbd-us.com)>

**Sent:** Friday, October 25, 2019 2:13 PM

**To:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>

**Cc:** Palko, David <[David.Palko@wbd-us.com](mailto:David.Palko@wbd-us.com)>; Jones, Beth <[Beth.Jones@wbd-us.com](mailto:Beth.Jones@wbd-us.com)>

**Subject:** RE: PROPOSED: Petition, Attachment A, and proposed Consent Order

Thank you. These look good. A saw one typo in petitioner. Should be "Carolina" instead of "Caroline."

David Palko, an attorney in our office, is on the way to your office to pick up the documents.

Thanks very much for your help.

Mark

**Mark Henriques**

Partner

Womble Bond Dickinson (US) LLP

d: 704-331-4912

m: 704-650-2496

e: [Mark.Henriques@wbd-us.com](mailto:Mark.Henriques@wbd-us.com)

One Wells Fargo Center

Suite 3500

301 South College Street

Charlotte, NC 28202-6037



[womblebond Dickinson.com](http://womblebond Dickinson.com)



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**From:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>

**Sent:** Friday, October 25, 2019 2:03 PM

**To:** Henriques, Mark <[Mark.Henriques@wbd-us.com](mailto:Mark.Henriques@wbd-us.com)>; Jones, Beth <[Beth.Jones@wbd-us.com](mailto:Beth.Jones@wbd-us.com)>

**Cc:** Donald Phillips <[DKPhillips@greenvillenc.gov](mailto:DKPhillips@greenvillenc.gov)>

**Subject:** RE: PROPOSED: Petition, Attachment A, and proposed Consent Order

**Re: Case Name:** **In the Matter of Custodial Law Enforcement Agency Recording Sought by: Beth Tyner Jones, Esq. and Womble Bond Dickinson (US) LLP, P.A.**

**Pitt County File No.:** 19 CVS \_\_\_\_\_

**GPD Case File No.:** None

Mark and Beth:

As discussed earlier today, please find attached a draft Petition, Attachment A, and proposed Consent Order for your review and approval.

Please note that Ken Gray and Ward and Smith, P.A. (Attorneys for Dan Gerlach) will also be filing and submitting similar documents.

Please give me a call if any changes need to be made or if you or your team have any questions regarding logistics. My direct line is (252) 329-4331.

Thank you.

Donald

**Donald K. Phillips**

Assistant City Attorney

P.O. Box 7207

Greenville, NC 27835-7207

Tel: (252) 329-4426

Fax: (252) 329-4626

Email: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)

Website: [www.greenvillenc.gov](http://www.greenvillenc.gov)



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STATE OF NORTH CAROLINA  
COUNTY OF PITT

**IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 19 CVS**

**IN THE MATTER OF CUSTODIAL  
LAW ENFORCEMENT AGENCY  
RECORDING SOUGHT BY:**

**BETH TYNER JONES, ESQ. and  
WOMBLE BOND DICKINSON (US) LLP,**

**Petitioners.**

**CONSENT ORDER  
ON PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT  
AGENCY RECORDING  
N.C.G.S. § 132-1.4A(g)**

**THIS MATTER** came on to be heard before the undersigned Superior Court Judge upon the Petition for Release of Custodial Law Enforcement Agency Recording filed on October 25, 2019 by Petitioners, Beth Tyner Jones, Esq. and Womble Bond Dickinson (US) LLP, pursuant to N.C.G.S. § 132-1.4A(g) to determine whether release of law enforcement agency recordings related to this matter is warranted under Chapter 132 of the North Carolina General Statutes.

## APPEARANCES

**For Petitioners:**

Beth Tyner Jones, Esq. and  
Womble Bond Dickinson (US) LLP  
555 Fayetteville Street, Suite 1100  
Raleigh, North Carolina 27601  
*Petitioners*

For Custodial Law  
Enforcement Agency and  
the Head of the Custodial  
Law Enforcement  
Agency:

Donald K. Phillips  
Assistant City Attorney  
City of Greenville  
200 West Fifth Street  
Post Office Box 7207  
Greenville, North Carolina 27835  
*Counsel for City of Greenville (Greenville Police  
Department) and Designated Representative of Chief of  
Police Mark R. Holtzman (Head of Custodial Law  
Enforcement Agency)*

For Pitt County District  
Attorney's Office:

None Appearing

**BASED UPON** the careful consideration of the arguments presented at the hearing of this matter and the entire record in this proceeding, the undersigned makes the following findings of fact.

### **FINDINGS OF FACT**

1. The Petitioners in this matter are Beth Tyner Jones, Esq. and Womble Bond Dickinson (US) LLP (“Petitioners”). On October 25, 2019, Petitioners, filed a Petition for Release of Custodial Law Enforcement Agency Recording pursuant to N.C.G.S. § 132-1.4A(g) on a form approved by the Administrative Office of the Courts (AOC-CV-270) (the “Petition”).

2. The City of Greenville (the “City”), is a municipal corporation organized and existing under the laws of the State of North Carolina.

3. Pursuant to Chapter 160A of the North Carolina General Statutes, the City has established, organized, and maintained an accredited law enforcement agency, the Greenville Police Department (“GPD”), with territorial jurisdiction and all law enforcement powers as authorized by statute, case law, and the common law of the State of North Carolina within the corporate limits of the City.

4. Petitioners seek footage from certain traffic/public safety cameras which are unrelated to any pending GPD criminal investigation.

5. The City and GPD consider Petitioners’ Petition to be a request for traffic/public safety cameras recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), which are not public record pursuant to N.C.G.S. § 132-1.4(c) and N.C.G.S. § 132-1.4A(b), and of which GPD owns or leases or whose personnel operates the equipment that created the recordings at the time the recordings were made.

6. GPD is the custodial law enforcement agency at issue in this matter as defined by N.C.G.S. § 132-1.4A(a)(2).

7. On or about October 25, 2019, in accordance with N.C.G.S. § 132-1.4A(g), Petitioners served a copy of the Petition upon Mark R. Holtzman, GPD Chief of Police, the head of the custodial law enforcement agency (“Chief Holtzman”), and upon the Honorable Faris C. Dixon, District Attorney for Prosecutorial District 3A, Pitt County (“District Attorney Dixon”).

8. On or about October 25, 2019, the Petitioners also served a courtesy copy of same to Donald K. Phillips, Assistant City Attorney and the attorney for the City and GPD (“Mr. Phillips”).

9. In accordance with N.C.G.S. § 132-1.4A(g), Chief Holtzman (“the head of the custodial law enforcement agency”) was notified of the Petition and has been given an

opportunity to be heard, by and through his designated representative, Mr. Phillips (“and those persons, or their designated representative,” have been “given an opportunity to be heard”).

10. In accordance with N.C.G.S. § 132-1.4A(g), the City is unaware of any law enforcement agency personnel whose image or voice are in any of the recordings at issue. Accordingly, there are no law enforcement agency personnel subject to being notified and given an opportunity to be heard in this matter.

11. Each person entitled to be notified of this proceeding, was given an opportunity to be heard, either individually or by such person’s designated representative.

12. GPD has custody of the following seven (7) recordings, as defined by N.C.G.S. § 132-1.4A(a)(6), involving and/or related to Petitioners’ request and that are the subject of the Petition at issue:

<b>GPD Recording</b>				
<b>No.</b>	<b>GPD File Name</b>	<b>Date</b>	<b>Type</b>	<b>Time</b>
1.	TFC_GPD_5thReade_PTZ_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/25/2019	Traffic/Public Safety Camera	9:20 pm-10:45 pm 9:20 pm-9:30 pm 9:20 pm-9:30 pm
2.	UPT_GPD_5thCotanche_Quad5_N_R6a UPT_GPD_5thCotanche_Quad5_E_R6a UPT_GPD_5thCotanche_Quad5_W_R6a	09/25/2019	Traffic/Public Safety Camera	10:41 pm-10:43 pm 10:41 pm-10:43 pm 10:41 pm-10:43 pm
3.	UPT_GPD_5thCotanche_Quad1_SE_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/25/2019	Traffic/Public Safety Camera	10:42 pm-10:46 pm 10:42 pm-10:46 pm 10:42 pm-10:46 pm
4.	UPT_GPD_5thCotanche_Quad4_SW_R6a UPT_GPD_5thCotanche_Quad4_W_R6a UPT_GPD_5thCotanche_Quad4_N_R6a UPT_GPD_5thCotanche_Quad4_S_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am 1:15 am-1:21am
5.	UPT_GPD_5thCotanche_Quad1_S_R6a UPT_GPD_5thCotanche_Quad1_SE_R6a	09/26/2019	Traffic/Public Safety Camera	1:15 am-1:21am 1:15 am-1:21am
6.	UPT_GPD_5thCotanche_S_R2	09/26/2019	Traffic/Public Safety Camera	1:16am-1:17 and 1:47 am-1:56 am
7.	TFC_GPD_5thReade_PTZ_R2 TFC_GPD_5thReade_W_R2 UPT_GPD_5thReade_Quad1_NE_R6a UPT_GPD_5thReade_Quad1_W_R6a	09/26/2019	Traffic/Public Safety Camera	2:10 am-2:13 am

13. Herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 are City traffic/public safety camera “recordings,” as defined by N.C.G.S. § 132-1.4A(a)(6)(“[a] visual, audio, or visual and audio recording captured by . . . any other video or audio recording device . . .”). The parties agree and stipulate to the release of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in its entirety to Petitioners. The parties further agree and stipulate that GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 in their entireties as herein defined are relevant to Petitioners’ request and are subject to release to Petitioners as defined by N.C.G.S. § 132-1.4A(a)(7) as further ordered herein.

14. All recordings at issue in this matter were made entirely in Pitt County, North Carolina.

15. The Court did not conduct an in-camera review of any recordings at issue in this case.

**BASED UPON** the foregoing findings of fact, the undersigned makes the following conclusions of law.

#### **CONCLUSIONS OF LAW**

1. The filing of this Petition is made in accordance with N.C.G.S. § 132-1.4A(g).
2. Each person entitled to be notified of the proceeding was given an opportunity to be heard, either individually or by such person’s designated representative.
3. To the extent that same exists, Petitioners have stated the date and approximate time of the activity captured in the recordings sought or have otherwise identified the activity with reasonable particularity sufficient to identify the recordings.
4. The Court has jurisdiction over the parties and the subject matter herein.
5. The Court has carefully reviewed N.C.G.S. § 132-1.4A in its entirety.
6. A “recording” is defined in N.C.G.S. § 132-1.4A(a)(6) as:  
  
[a] visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
7. “Release,” as defined by N.C.G.S. § 132-1.4A(a)(7), means “[t]o provide a copy of a recording.”

8. All of the recordings at issue (GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7) are records of criminal investigations and/or records of criminal intelligence information pursuant to N.C.G.S. § 132-1.4. Additionally, all recordings at issue are not public records pursuant to N.C.G.S. § 132-1.4(a) and N.C.G.S. § 132-1.4A(b). Accordingly, the recordings at issue contain information that is otherwise exempt from disclosure or release under North Carolina law.

9. Pursuant to N.C.G.S. § 132-1.4A(g), Petitioners seek release of all of the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7.

10. N.C.G.S. § 132-1.4A(g) states in pertinent part:

In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

11. The Court has considered the standards set out in N.C.G.S. § 132-1.4A(g) and other standards the Court deems relevant in determining whether to order the release of all or a portion of the recordings at issue.

12. Pursuant to N.C.G.S. § 132-1.4A(g), “[t]he court shall release only those portions of the recording that are relevant to the person’s request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.”

The Court does hereby **ORDER, ADJUDGE, and DECREE** as follows:

1. That by stipulation, the parties agree that the herein defined GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7, which are relevant to the Petitioners’ request, should be released, as defined by N.C.G.S. § 132-1.4A(a)(7), to Petitioners as further ordered herein.

2. That upon payment by Petitioners of \$5.00 per DVD to the City of Greenville, pursuant to N.C.G.S. § 132-1.4A(1) and *The City of Greenville Manual of Fees* (available at: <https://www.greenvillenc.gov/home/showdocument?id=6918>), with a copy of the receipt emailed or otherwise provided to Mr. Phillips, GPD shall provide to Petitioners within ten (10) business days from the satisfactory receipt of said payment receipt, the requisite number of DVDs containing the contents and portions of GPD Recording Nos. 1, 2, 3, 4, 5, 6, and 7 as herein identified and ordered.

**SO ORDERED**, this the \_\_\_\_\_ day of October, 2019.

---

Superior Court Judge Presiding

CONSENTED TO:

For Petitioners:

For Custodial Law Enforcement Agency and  
the Head of the Custodial Law Enforcement  
Agency:

---

Beth Tyner Jones, Esq.  
Womble Bond Dickinson (US) LLP

---

Donald K. Phillips  
Assistant City Attorney

1118271

STATE OF NORTH CAROLINA  
COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 19 CVS \_\_\_\_\_

IN THE MATTER OF CUSTODIAL )  
LAW ENFORCEMENT AGENCY )  
RECORDING SOUGHT BY: )  
 )  
BETH TYNER JONES, ESQ. and )  
WOMBLE BOND DICKINSON (US) LLP, )  
 )  
Petitioners. )

**ATTACHMENT A**

As set forth in the Petition to which this Attachment is incorporated by reference, it is requested that the City of Greenville/Greenville Police Department shall release, to Petitioners, by and through Beth Tyner Jones, Esq., any and all footage/recordings from static/pole mounted (traffic/public safety) cameras as set forth below:

1. Footage of the area outside of the area of Sup Dogs (East Fifth Street/Reade Street), Greenville, NC between approximately 9:00 pm to 10:50 pm on Wednesday, September 25, 2019, particularly any footage showing Mr. Dan Gerlach.
2. Footage of the area outside of the area of Club 519 (East Fifth Street/Cotanche Street), Greenville, NC between approximately 10:40 pm on Wednesday, September 25, 2019 to approximately 1:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.
3. Footage showing the area of (East Fifth Street/Cotanche Street), Greenville, NC between approximately 1:40 am to 2:00 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach.
4. Footage showing the area of 212 East Fifth Street (East Fifth Street/Reade Street), Greenville, NC between approximately 2:00 am to 2:30 am on Thursday, September 26, 2019, particularly any footage showing Mr. Dan Gerlach, especially footage of Mr. Dan Gerlach approaching, walking up to, and entering a vehicle (believed to be a Gold colored Nissan) and then driving away from said location.



**STATE OF NORTH CAROLINA**

File No.

**19 CVS****PITT** CountyIn The General Court Of Justice  
Superior Court Division**IN THE MATTER OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING SOUGHT BY:**

Name Of Petitioner

**Beth Tyner Jones, Esq. and  
Womble Bond Dickinson (US) LLP**

Address

c/o Womble Bond Dickinson (US) LLP  
555 Fayetteville Street  
Suite 1100

City, State, Zip

Raleigh, NC 27601

Phone No.

(919) 755-8177

Fax No.

(919) 755-6075

Email Address

beth.jones@wbd-us.com

**PETITION FOR RELEASE OF  
CUSTODIAL LAW ENFORCEMENT AGENCY  
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure  
(No Filing Fee Applies)☒ G.S. 132-1.4A(g) – General  
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to Beth Tyner Jones, Attorney. State that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Petitioners request all relevant video/recorded footage from static/pole mounted (traffic/public safety) cameras covering the area of 1) East Fifth Street and Reade Street in Greenville, NC and 2) East Fifth Street and Cotanche Street in Greenville, NC between approximately 9:00 pm on Wednesday, September 25, 2019 and 2:30 am on Thursday, September 26, 2019 showing Mr. Dan Gerlach in this area and otherwise approaching, walking up to, entering a vehicle (believed to be a gold colored Nissan), and then driving away from said location. Petitioners' more specific request for release is stated in Attachment A, which is hereby made a part of this Petition.

(Please see Attachment A)

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE  
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

- ☒ Personal Delivery
- ☐ By Regular Mail, US postage prepaid, addressed as follows:

Mark R. Holtzman  
Chief of Police  
Greenville Police Department  
500 South Greene Street  
Greenville, NC 27834Note: Also copied Assistant City Attorney Donald K. Phillips by email to: [dkphillips@greenvillenc.gov](mailto:dkphillips@greenvillenc.gov)**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

- ☒ Personal Delivery
- ☐ By Regular Mail, US postage prepaid, addressed as follows:

The Honorable Faris C. Dixon  
Pitt County District Attorney  
Pitt County Courthouse  
100 West 3rd Street  
Greenville, NC 27858

Date

**October 25, 2019**

Petitioner's Signature

Beth Tyner Jones